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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/561,881

11/27/2006

Andreas Biggel

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06/09/2011

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INTELLECTUAL PROPERTY DEPARTMENT
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EXAMINER

JENNISON, BRIAN W

ART UNIT

PAPER NUMBER

3742

NOTIFICATION DATE

DELIVERY MODE

06/09/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/561,881

Applicant(s)

BIGGEL ET AL.

Examiner

BRIAN JENNISON

Art Unit

3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-6 and 9-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 2-6, 9-18 and 17-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

Claim Objections

1. Claims 2-6 and 9-15 are objected to because of the following informalities: the phrase "characterized in that" is used and may be considered indefinite since this is not consistent with U.S. practices. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 17 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

This rejection is based upon applicant's argument on page 12 of the reply. It is unclear, based on the current claim language, as to how the upper guide rollers are being adjusted during the flow.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-6, 8-15 and 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fujii et al (US 2002/0027309) in view of Harrington (US 6,581,675).

Fujii teaches: regarding claims 13-14, 17 and 18, Fig 2 shows two parallel endless rotatable metallic cooling belts 23 and 26 which are cooled by the rollers. Upper guide rollers 21 and 24 have the belts 23 and 26 positioned over them. The rollers form a filling gap for material 11 and are rotatable in a downward direction counter to each other. (See Paragraph [0077]) The belts are also oriented at a 90 degree angle from a horizontal plane. The rollers 28 and 29 apply pressure for molding, cooling and shaping. (See Paragraph [0088]) The fact that a melted food is used in the claim is intended use as this invention may also be used for cheese. Fujii fails to teach regarding claim 17, the distance between the guide rollers being adjustable. Harrington discloses regarding claims 17 and 18, the rollers 15 and 17 may be adjusted. (See column 5, Lines 1-10) It would have been obvious to adapt Fujii in view of Harrington to provide the adjustable rollers 15 and 17, in place of the upper rollers in Fujii to change the desired thickness of the metal strip. The upper and lower rollers of Fujii are axially aligned.

Fujii also discloses:

Regarding Claim 2: Fig 2 shows the belts 23 and 26 arranged in a vertical position.

Regarding Claim 3: The belts 23 and 26 are rotatable in a downward direction counter to each other.

Regarding Claim 4: Fig 2 shows the cooling belts positioned over upper and lower guide rollers with the rollers axially parallel to each other.

Regarding Claim 5: A lower roller 29 is offset from lower roller 22.

Regarding Claim 6: Since the rollers 24 and 21 are cooling rollers there is some cooling medium acting on the rollers to achieve cooling. **See Paragraph [0014].**

Regarding Claim 8: The distance between the rollers 24 and 21 is easily altered to accommodate a larger or smaller gap.

Regarding Claims 9-11, 15: The rollers 28 and 29 are pressure rollers and may apply more or less pressure for adjusting the width of the strip of material. **See Paragraph [0080].**

Response to Arguments

4. Applicant's arguments filed 4/1/2011 have been fully considered but they are not persuasive.

In response to applicant's argument on pages 10-13 of the reply, the pinch rollers in Harrington may be considered the upper rollers and rollers used to modify Fujii as stated in the rejection. Calling the rollers, upper rollers and pinch rollers is relative considering the term comprising is used in the present claims. The rollers 15 and 17 function in the way applicant's invention is claimed. They apply pressure for shaping and molding and the gap between them may be adjusted. Harrington and Fujii both have devices for applying pressure. The resin sheet in Fujii is still being cooled therefore it may still be shaped.

5. In response to applicant's argument on page 12 of the reply (Paragraph 3) that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., altering the width of the filling gap and thus adjust the thickness of a food material as it passes through the filling gap) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). This statement appears to imply that the gap is being adjusted while the machine is in operation and the food is passing through the gap.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIAN JENNISON whose telephone number is (571)270-5930. The examiner can normally be reached on M-Th 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, TU HOANG can be reached on 571-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BRIAN JENNISON/
Examiner, Art Unit 3742

/TU B HOANG/
Supervisory Patent Examiner, Art
Unit 3742

6/4/2011

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